

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RODOSVALDO POZO,

Plaintiff,

ORDER

v.

02-C-12-C

BRAD HOMPE, CAPT. BLACKBOURN,  
WARDEN GERALD BERGE,  
SGT. HUIBRETSE and JON LITSCHER,

Defendants.  
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This civil action is proceeding on plaintiff Rodosvaldo Pozo's claims that defendants subjected him to cruel and unusual conditions of confinement and violated his rights to free expression and free exercise of religion. In an order entered on October 7, 2002, the magistrate judge denied plaintiff's motion for appointment of counsel as well as various discovery motions. Now, plaintiff has filed a "Motion Opposing Magistrate's Ruling." In his motion, plaintiff raises several issues: (1) the parties did not consent to have the magistrate judge preside over any part of this case; (2) the magistrate judge's ruling was biased; and (3) plaintiff is entitled to the documents that he requested in his discovery motions. I will construe plaintiff's motion as an objection to the magistrate judge's order under Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(A).

First, although plaintiff did not consent to have the magistrate judge conduct any of the

proceedings in this case, this does not invalidate the magistrate judge's order. Under 28 U.S.C. § 636(b)(1)(A), "a judge may designate a magistrate to hear and determine any pretrial matter pending before the court" except with respect to certain motions that are not present here. Thus, the magistrate judge was authorized to decide plaintiff's discovery motions. Second, although plaintiff is correct that he is entitled to an impartial decisionmaker, see Bracy v. Gramley, 520 U.S. 899 (1997), plaintiff has not presented any evidence that the magistrate judge was biased.

Finally, the standard for reviewing a pretrial order of a magistrate judge is whether it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Plaintiff contends that the magistrate judge should have ordered defendants to produce the following information and documents: (1) the full name of the Spanish and English language interpreter and the interpreter's certificate; (2) "the documents pertaining to the Recreation hours (i.e. Daily Recreation log) from 2000-2002"; (3) "the policy concerning religious items from 2000-2002 (the Muslim's one)"; and (4) "the information concerning the temperature done by the Atty Garvey's expert concerning Pozo's 8th Amdt. claim."

With respect to the name of the interpreter, the magistrate judge explained in the October 7 order that plaintiff asked for this information in the form of a request for an admission under Fed. R. Civ. P. 36(a), but that if plaintiff wanted the answer to a question he must submit it as an interrogatory and not as a request for an admission. Order dated October 7, 2002, dkt. #47, at 3. With respect to documents concerning recreation, although defendants objected to plaintiff's request as being vague, they identified a number of specific handbooks and logs that may have the information plaintiff seeks. They further

informed plaintiff he could obtain copies of any of those materials by submitting payment for copying costs or, in the alternative, plaintiff could submit a request to the inmate complaint examiner to review those materials. Defendants informed plaintiff that the policies for religious items were available in the unit law library. The magistrate judge explained that “[p]laintiff does not need a court to obtain the documents he seeks” and that under Fed. R. Civ. P. 34, defendants are not required to pay for photocopies. Order dated October 7, 2002, dkt. #47, at 2. Finally, with respect to “information concerning the temperature,” plaintiff’s discovery requests do not appear to ask for this information and he did not discuss it in his motion to compel. Although plaintiff requested “the legal papers filed by Atty. Garvey against this (Inst.) in case no. 00-C-421-C,” defendants rightfully objected to the request as overbroad and unduly burdensome. If plaintiff wishes to obtain a particular document, he should submit to defendants a request that identifies clearly the document that he is seeking.

In sum, plaintiff has not shown that the magistrate judge’s order is clearly erroneous or contrary to law. Accordingly, plaintiff’s motion will be denied.

#### ORDER

IT IS ORDERED that the decision entered by the United States Magistrate Judge on October 7, 2002, denying plaintiff Rodosvaldo Pozo’s motion to compel discovery remains as entered because plaintiff has failed to show that the decision is clearly erroneous or contrary to law.

Entered this 31<sup>st</sup> day of October, 2002.

BY THE COURT:

BARBARA B. CRABB  
District Judge